

3.0 COMMENTS ON REGION II SITES

3.1 Dayco Corp./L.E. Carpenter Co., Wharton Borough, New Jersey

3.1.1 List of Commenters

NPL-U3-3-209 Steven T. Singer of Schwartz, Tobin & Stanziale
on behalf of Dayco Corporation and L.E. Carpenter
Company. 6/11/85.

3.1.2 Summary of Comments and Responses

The commenter raised public policy issues and suggested that correction of several alleged errors in the HRS evaluation of the site would render NPL listing inappropriate. Specific points are discussed below.

Toxicity/Persistence

The commenter disagreed with the assigned value of 18 for toxicity/persistence based on the detection of chloroform in a 1980 lagoon sludge sample. Two reasons were offered for the disagreement. The sludge was removed from the lagoon in 1982, and chloroform has never appeared in any ground water samples. The commenter suggested that ethylbenzene and xylene be evaluated, which would result in a toxicity/persistence rating factor value of 9.

In response, removal of the sludge in 1982 constitutes a response action. EPA computes HRS scores and lists sites on the basis of conditions existing before any response actions are taken in order to represent the full scope of the original problem presented by a site. The basis for this position is discussed further in Part VII of the preamble to the initial NPL (48 FR 40664,



September 8, 1983) and the first NPL update (49 FR 37078, September 21, 1984). If EPA determines that a site is cleaned up so that no further response is necessary, EPA will consider deleting the site from the list, as discussed in Part VIII of the preambles noted above (48 FR 40668 and 49 FR 37080, respectively) and in Section 300.66(c)(7) of the NCP (50 FR 47972, November 20, 1985). EPA has not made such a determination with respect to this site at this time. The Agency will investigate remedial activities undertaken and completed at this site and assign the appropriate response status codes (51 FR 21102, June 10, 1986).

In addition, the substances evaluated for toxicity/persistence need not be the same substances noted in the observed release portion of the documentation record. Toxicity/persistence values are based on the most toxic and persistent material at the site that can migrate by a specific pathway (i.e., a substance with a non-zero containment value). The observed release value indicates only that some substance has migrated from the site and that others may migrate in the future. In this case, therefore, the observed release value was assigned to reflect contaminants migrating from the site and the toxicity/persistence factor was correctly based on the chloroform found in the lagoon. It should be noted that several substances were identified in the sludge sample that would be assigned values above the 9 suggested by the commenter.

Waste Quantity

The commenter stated that the hazardous waste quantity factor value of 6 was in error because it assumed the presence of the sludge which had been removed. The commenter suggested a value of 3 based on 20,000 gallons of solvent remaining at the site.

In response, as already noted, the removal of this material from the lagoon is not considered in developing an HRS score in order to represent the full scope of the problem presented by the site. In addition, the 350 cubic yards of removed material included in the quantity calculation at the time of proposal represented a very conservative 10 percent of the material actually removed during the response action. This amount was used based on a correspondence from Frank Aron, L.E. Carpenter Technical Director, that 85 to 90 percent of the removed material appeared to be soil. This letter was contained in the reference identified as Appendix B at the time of proposal. In reviewing the HRS documentation, it was noted that the waste quantity was stated to be 2800 drum equivalents. The correct total is 1800 drum equivalents (400 drums of solvent and 1400 drums of sludge). The correct HRS value for this quantity is 5. Both the HRS score sheets and the documentation record have been revised accordingly.

Ground Water Population

The commenter suggested that the matrix value for "distance to nearest well/population served" was misscored because it took into

account the Wharton wells for the "distance to the nearest well" part of the matrix and the Dover wells for the "population served" part of the matrix.

In response, the commenter is correct in his assessment of how the matrix value was assigned but is not correct in his statement that this method is in error. The population considered is that using water withdrawn within 3 miles of the site from the aquifer of concern. The population need not be using water from the nearest well to be counted.

Surface Water

The commenter objected to the values assigned in the surface water pathway because they were based on the assumption that the lagoon was still present at the site.

As already indicated, response actions are not considered in the development of HRS values. The surface water pathway was, therefore, correctly assessed based on the past existence of the lagoon.

Public Policy Considerations

Citing the legislative history and Section 104(a)(1) of CERCLA, the commenter concluded that listing on the NPL should be limited to those sites requiring Fund-financed remedial action or enforcement under CERCLA. Further, the commenter stated that listing of this site is inappropriate because:

- Inclusion adds an unnecessary level of bureaucracy that serves no beneficial purpose.
- There is no justification for listing when the site is the subject of a voluntary, privately-financed cleanup.
- Listing would have serious negative repercussions for the companies by implying that they are "shirking their environmental responsibilities."

In response, neither the legislative history nor CERCLA state, as implied by the commenter, that sites should not be listed if they are undergoing voluntary cleanup. Listing on the NPL makes a site eligible for remedial action funding, and EPA will examine the site to determine an appropriate response. Actual funding may not necessarily be undertaken in the precise order of HRS scores, however, and in some cases may not be necessary at all. EPA will determine the need for using Fund monies for remedial activities on a site-by-site basis, taking into account the HRS score, State priorities, further site data, other response alternatives, and other factors as appropriate. Other factors may include response actions funded by responsible parties. The status of enforcement actions are not considered in the decision to list sites. Finally,

"The Agency believes that even where a site is undergoing response actions, interested parties such as neighboring residents may need to know about the threats posed by that site...the Agency believes that including sites on the NPL until appropriate cleanup actions have been completed will provide more incentives for early and effective actions..." (49 FR 37075, September 21, 1984)

Finally, in listing sites on the NPL, it is not the intention of the Agency to inflict economic damage on potentially responsible

parties. As stated in the preambles noted above, inclusion of a facility on the NPL "does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person."

The original migration score for this facility was 48.12.

Based on the changes noted above, the HRS scores for Dayco

Corp./L.E. Carpenter Co. are:

Ground Water	79.43
Surface Water	7.72
Air	0.00
Total	46.13

3.2 Dayco Corp./L.E. Carpenter Co., Wharton Borough, New Jersey

3.2.1 List of Commenters

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3.2.2 Summary of Comments and Responses

The commenter raised public policy issues and suggested that correction of several alleged errors in the HRS evaluation of the site would render NPL listing inappropriate. Specific points are discussed below.

Toxicity/Persistence

The commenter disagreed with the assigned value of 18 for toxicity/persistence based on the detection of chloroform in a 1980 lagoon sludge sample. Two reasons were offered for the disagreement. The sludge was removed from the lagoon in 1982, and chloroform has never appeared in any ground water samples. The commenter suggested that ethylbenzene and xylene be evaluated, which would result in a toxicity/persistence rating factor value of 9.

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September 8, 1983) and the first NPL update (49 FR 37078, September 21, 1984). If EPA determines that a site is cleaned up so that no further response is necessary, EPA will consider deleting the site from the list, as discussed in Part VIII of the preambles noted above (48 FR 40668 and 49 FR 37080, respectively) and in Section 300.66(c)(7) of the NCP (50 FR 47972, November 20, 1985). EPA has not made such a determination with respect to this site at this time. The Agency will investigate remedial activities undertaken and completed at this site and assign the appropriate response status codes (51 FR 21102, June 10, 1986).

In addition, the substances evaluated for toxicity/persistence need not be the same substances noted in the observed release portion of the documentation record. Toxicity/persistence values are based on the most toxic and persistent material at the site that can migrate by a specific pathway (i.e., a substance with a non-zero containment value). The observed release value indicates only that some substance has migrated from the site and that others may migrate in the future. In this case, therefore, the observed release value was assigned to reflect contaminants migrating from the site and the toxicity/persistence factor was correctly based on the chloroform found in the lagoon. It should be noted that several substances were identified in the sludge sample that would be assigned values above the 9 suggested by the commenter.

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Ground Water Population

The commenter suggested that the matrix value for "distance to nearest well/population served" was misscored because it took into

account the Wharton wells for the "distance to the nearest well" part of the matrix and the Dover wells for the "population served" part of the matrix.

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